SUPREME COURT OF THE UNITED STATES.

No. 257.

THE LESSEE OF WILLIAM F. RAYMOND, PLAINIFFS IN ERROR,

vs.

NICHOLAS LONGWORTH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OHIO.

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GIDEON, Printer.

The United States of America, to the honorable the judges of the circuit court of the United States, for the seventh circuit and district of Ohio, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action of ejectment, which was in the said court, between the lessee of William F. Raymond, plaintiff, and Nicholas Longworth, defendant, manifest error hath intervened, as it is said, to the great damage of the said the lessee of William F. Raymond, as by his complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States, on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this 12th day of April, in the year of our [SEAL.] Lord one thousand eight hundred and forty-nine, and in the seventy-third year of the American independence.

Attest:

WM. MINER, *Clerk.*

I allow this writ of error.

JOHN McLEAN,
Justice, Supreme Court, U. S.

12 April, 1849.

The United States of America, Supreme Court of the United States, to Nicholas Longworth, greeting:

Whereas, the lessee of William F. Raymond has obtained the allowance of our writ of error to the circuit court of the United States, for the seventh circuit and district of Ohio directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment, in an action of ejectment, wherein you, the said Nicholas Longworth, in that action, lately recovered against the said the lessee of William F. Raymond, the sum of sixteen dollars and thirty-eight cents, costs, as by the said record in the said circuit court and district aforesaid remaining appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said the lessee of William F. Raymond we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose

of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this 12th day of April, in the year of our Lord one thousand eight hundred and forty-nine, and in the seventy-third year of American independence.

[SEAL.]

Attest: JOHN McLEAN.

I acknowledge service of the within process.
Cincinnati, April 23d, 1849.

N. LONGWORTH,
By L. ANDERSON,
His attorney in fact.

Pleas begun and held at the court-house in the city of Columbus, on the second Monday in the month of November, being the thirteenth day of that month, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the United States of America the seventy-third, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States, within and for the district of Ohio.

Among other proceedings had were the following, to wit:

The lessee of WILLIAM F. RAYMOND
vs.
NICHOLAS LONGWORTH.
} In ejectment.

Be it remembered, that heretofore, to wit, on the nineteenth day of July, being at the July term of said court, in the year of our Lord eighteen hundred and forty-eight, came the s id plaintiff by his attorney, and filed in court here his certain declara ion in ejectment, with a notice thereto annexed, which said declaration and notice are respectively in the words and figures following, to wi.:

District of Ohio, ss. Circuit court of the United States for the district of Ohio. July term, 1848.

John Doe, a citizen of the State of Connecticut, by D. Raymond, his attorney, complains, that whereas a certain William F. Raymond, a citizen and resident of Hartford county, and State of Connecticut, on the fourteenth day of June, in the year 1848, at Cincinnati, in the district of Ohio aforesaid, had demised to the said John Doe the following described tenements, with the appurtenances, situated in Hamilton county, to wit, all that certain tract of land in the western part of Cincinnati, in said county, commencing thirty feet north of the line of Nicholas Longworth's individual property on the west side of Mill Creek road, thence north on the line of said road five hundred

feet, and extending back westwardly at right angles with said road four hundred feet, it being the same property conveyed by Hugh McDougal, late auditor of Hamilton county, to Charles Phelps, and by said Phelps and wife conveyed to Daniel Raymond by deed dated February, 1846; to have and to hold the said tenements with the appurtenances, from the 14th day of June, in the year 1848, for and during the term of ten years thence next ensuing, and fully to be complete and ended; by virtue of which said demise the said John Doe entered into the said tenements with the appurtenances, and became and was thereof possessed for the said term, and being thereof so possessed, Richard Roe, afterwards, to wit, on the 14th day of June, in the year last aforesaid, with [force] and arms entered into the said tenements with the appurtenances, and ejected the said John Doe therefrom; and, also, that whereas the State of Ohio, on the thirteenth day of June, in the year 1848, at the county and district aforesaid, had demised to the said John Doe certain other tenements with the appurtenances, situated in Hamilton county aforesaid, and described as follows, to wit, all that certain tract of land in the western part of Cincinnati, commencing thirty feet north of Nicholas Longworth's individual property on the west side of Mill creek road, thence north on the line of said road five hundred feet, and extending back the same width at right angles with said road four hundred feet; to have and to hold the same, to the said John Doe and his assigns, for and during the term of ten years thence next ensuing, and fully to be complete and ended; by virtue of which said last mentioned demise the said John Doe entered into the said tenements with the appurtenances, and became and was thereof possessed of the term aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe, afterward, to wit, on the day and year last aforesaid, at the district aforesaid, with force and arms, entered the said tenements with the appurtenances, and ejected the said John Doe from the same, and other wrongs then and there did to the great damage of the said John Doe, to wit, the damage of one hundred dollars, and therefore he brings suit, &c.

D. RAYMOND,
Att'y for plaintiff.

Mr. Nicholas Longworth.

SIR: I am informed that you are in possession, or claim title, to the premises in the foregoing declaration mentioned, or to some part thereof; as I have no title to the same, I advise you to appear at the next term of the circuit court of the United States, to be holden at Columbus, on the 17th day of July next, and then and there cause yourself to be made defendant in my stead, otherwise I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

June 13, 1848.

RICHARD ROE.

I acknowledge service of the above notice, by copy, this 26th June, 1848.

N. LONGWORTH,
By L. ANDERSON,
His attorney in fact.

And thereupon came Nicholas Longworth, by his attorney, and filed in court here the following consent rule and plea, to wit:

Circuit court of the United States, for the district of Ohio. July term, 1848.

JOHN DOE, ex. dem. of Wm. F. Raymond, and al. vs. RICHARD ROE. } Ejectment.

By consent of parties Nicholas Longworth is made defendant in this case in place of Richard Roe, the casual ejector.

D. RAYMOND,
Att'y for plaintiff.

The said Nicholas Longworth hereby confesses the lease, entry, and ouster, alleged in the declaration, and admits himself to be in possession of the premises described in the declaration, and for plea says, that he is not guilty of the trespass and ejectment complained of; and of this he puts himself upon the country, and the said John Doe doth the like.

V. WORTHINGTON, *Attorney.*

And thereupon this cause was continued.

And afterwards, to wit, on the twenty-ninth day of November, being at the November term of said court, in the year of our Lord one thousand eight hundred and forty-eight, came the parties by their attorneys, and thereupon came a jury, to wit, L. A. Kelsey, Matthias Martin, Lawson Curtis, Christopher Aumock, Aaron Otter, Andrew Lytle, E. Dryer, T. J. Price, J. A. Markland, John Himrod, and William Hall, who were duly empannelled and sworn to speak the truth upon the issue joined between the parties, but the investigation of this cause not being completed, the court adjourned the jury until to-morrow morning at 9 o'clock.

And afterwards, to wit, on the thirteenth day of November, in the year and at the term of said court last mentioned, came the parties aforesaid, by their attorneys, and also the jurors aforesaid; and the investigation of this cause being completed, the said jurors upon their oath aforesaid do say, that the said defendant is not guilty of the trespass or ejectment laid to his charge in manner and form as the said plaintiff hath complained against him. Therefore, it is considered that the said defendant go hence without day, and recover of the said William F. Raymond, the lessor of the plaintiff herein, his costs in this behalf expended, taxed to $16 38.

On the trial of this cause the said plaintiff, by his attorney, tendered a bill of exceptions to the opinion of the court, upon the points set forth in said bill of exceptions, and prayed that the same might be signed and sealed by the court, and made a part of the record in this case, which is accordingly done, and is in the words and figures following, to wit:

Circuit court, United States, for the district of Ohio.

Lessee of WILLIAM F. RAYMOND
vs.
NICHOLAS LONGWORTH. } Ejectment.

On the trial of this cause the plaintiff, to support the issue on his part, offered in evidence the following deed from the auditor of Hamilton county to Charles Phelps, marked exhibit "A," as follows, to wit:

A.

This indenture, made this twelfth day of February, A. D. eighteen hundred and forty-five, by and between Hugh McDougal, as auditor of the county of Hamilton, in the State of Ohio, of the first part, and Charles Phelps of the second part, witnesseth: that whereas the tract or parcel of land hereinafter described, became and was, according to the provisions of the statute in that case made and provided, forfeited to the State of Ohio, on the last Monday of December, A. D. eighteen hundred and thirty-eight, for the non-payment of the taxes, interest, and penalty due thereon, (said tract or parcel of land having been offered for sale on that day by the treasurer of said county, for said taxes, interest, and penalty, and not sold for want of bidders.) And whereas said tract or parcel of land became and was, on the first day of January, A. D. eighteen hundred and forty-three, re-forfeited to the State of Ohio, according to the provisions of the statute in such case made and provided. And whereas said tract or parcel of land was afterwards, to wit, on the second Monday of December, A. D. eighteen hundred and forty-three, sold as such forfeited and re-forfeited land by the county auditor of said county of Hamilton, in all respects according to the provisions of the statutes in such case made and provided, to Charles Phelps, for the sum of eighty dollars. And whereas the said county auditor did give to said purchaser a certificate of sale, directed to the surveyor of the said county of Hamilton, requiring said surveyor to proceed, at the request of said purchaser, his heirs, assignee, or assignees, to ascertain the boundaries of said tract or parcel of land so purchased; and the said party of the second part, being the said purchaser, having produced to the said party of the first part the certificate of said sale, and the proper plat and certificate of the county surveyor of said county attached to a copy of the certificate of sale, and having paid the said party of the first part one dollar and twenty-five cents for a deed; now, therefore, the said party of the first part, in consideration of the premises, and the payment by

the said purchaser of the said sum of eighty-one $\frac{25}{100}$ dollars, the receipt whereof is hereby acknowledged, by these presents doth grant and convey, unto the said party of the second part, the said tract or parcel of land so forfeited and re-forfeited, and sold as aforesaid, the same being situate in said county of Hamilton and described as follows, to wit, all that certain tract of land in the western part of Cincinnati, in said county of Hamilton, on the west side of Mill creek road, on the high bank east of Mill creek, lying on the road where it makes a turn and runs northerly before it makes its turn, and runs westerly into the bottom of Mill creek, to the crossing of the same, commencing thirty feet north of the line of Longworth's individual property, on the west side of said Mill creek road, (and on a line with the fence;) thence north on said road five hundred feet, and extending the same width back at right angles from said road four hundred feet, being the premises occupied by Richard Malully as tenant of Charles Lehman; also the same premises bought by said Lehman of Longworth and Horne; also the same sold by Charles Lehman to James Cooper, by deed recorded in book No. 62, page 181, Hamilton county records, as per return of survey of John L. Hosbrook, county surveyor of said Hamilton county; to have and to hold the said tract or parcel of land to him, the said party of the second part, and to his heirs and assigns forever. In witness whereof the said party of the first part hath hereunto set his hand and seal officially, the day and year above written.

H. McDOUGAL, [SEAL.]
County auditor of Hamilton county.

Sealed, signed, and delivered in the presence of us.
WM. McDOUGAL,
A. B. McDOUGAL.

THE STATE OF OHIO,
Hamilton county, ss.

Before me, a notary public, in and for said county, personally appeared Hugh McDougal, county auditor of said county of Hamilton, and as such acknowledged the above instrument to be his official act and deed for the purpose therein expressed, this twelfth day of February, A. D. 1845.

J. H. GETZENDANNER, [SEAL.]
Notary Public.

(Endorsed.) Received 13th February, 1845, and recorded book No. 100, page 393.

THOS. HECKEWELDER,
Recorder, Hamilton county, Ohio.

Also a deed from said Phelps and wife to Daniel Raymond, marked exhibit B, as follows, to wit:

B.

Know all men by these presents that Charles Phelps and Eliza Phelps, wife of the said Charles, in consideration of five hundred dollars to them paid by Daniel Raymond, the receipt whereof is hereby acknowleged, do hereby convey and quit claim to the said Daniel Raymond, his heirs and assigns forever, all our right, title, interest, or claim, to all that certain tract of land conveyed to the said Charles Phelps by the official deed of Hugh McDougal, late county auditor of Hamilton county, dated the twelfth day of February, A. D. eighteen hundred and forty-five, recorded book No. 100, page 393, of Hamilton county records, and for the description, reference being had to the same, being in the western part of Cincinnati, in said county of Hamilton; to have and to hold the same, together with all the privileges and appurtenances to the same belonging, to the said Daniel Raymond, his heirs and assigns forever, in as full and ample a manner as the said Charles Phelps himself could have done. In witness whereof the said Charles Phelps and Eliza, his wife, who hereby relinquishes her right of dower in the premises, have hereunto set their hands and seals, at Cincinnati, this tenth day of December, eighteen hundred and forty-five.

CHARLES PHELPS, [SEAL.]
ELIZA PHELPS. [SEAL.]

In presence of—
PETER R. TAFT,
P. MALLON.

STATE OF OHIO, *Hamilton county, ss:*

Be it remembered, that on this 17th day of February, in the year eighteen hundred and forty-six, before me, Patrick Mallon, a notary public, duly appointed and commissioned within and for said county, personally appeared Charles Phelps and Eliza Phelps, the grantors in the foregoing deed, and severally acknowleged the same to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Eliza, wife of the said Charles Phelps, being by me examined separate and apart from her said husband, and the contents of said deed being by me first read and explained to her, declared that she did voluntarily sign, seal, and acknowledge the same, and that she was still satisfied therewith, as her act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal on the day and year last aforesaid. [SEAL.]

P. MALLON, *Notary Public.*

(Endorsed.) Received Feb'y 23, 1846, at ½ past 9 o'clock, a. m., recorded book 109, page 332.

THOS. HECKEWELDER,
Recorder, Hamilton county, Ohio.

Also the deed from Daniel Raymond to William F. Raymond, marked exhibit C, as follows, to wit:

C

This indenture, made this twelfth day of June, in the year eighteen hundred and forty-eight, between Daniel Raymond, of the city of Cincinnati, and State of Ohio, of the one part, and William F. Raymond, of Hartford county, and State of Connecticut, of the other part, witnesseth: that, in consideration of the sum of five dollars, to him in hand paid by the said William F., the receipt whereof is hereby acknowledged, the said Daniel hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said William F., his heirs and assigns forever, the following tract of land and premises, situate in Hamilton county, and State of Ohio, to wit, all that certain tract of land in the western part of Cincinnati, in said county of Hamilton, commencing thirty feet north of the line of Nicholas Longworth's individual property, on the west side of Mill creek road, thence north on the line of said road five hundred feet, and extending back westwardly, at right angles with said road, four hundred feet, being the same property conveyed by Hugh McDougal, auditor of Hamilton county, to Charles Phelps, and by Charles Phelps and wife conveyed to Daniel Raymond by deed dated Feb'y, 1846, and recorded in book 109, page 332, of Hamilton county records, as by reference thereto will more fully appear. To have and to hold the said tract of land and premises, together with the appurtenances thereto belonging, unto the said William F. Raymond, his heirs and assigns, forever.

In testimony whereof, I have hereunto affixed my hand and seal the day and year first above written.

DANIEL RAYMOND. [SEAL.]

Signed, sealed, and delivered in presence of—

W. GREENE,

A. HODGE.

HAMILTON COUNTY, *ss:*

Personally, before the subscriber, a notary public, appeared Daniel Raymond, and acknowledged the *the* foregoing to be his voluntary act and deed; Cincinnati, June 26th, 1848.

HENRY MORSE, [SEAL.]

Notary Public.

And rested.

The defendant then, to support the issue on his part, offered in evidence the following abstract from the records of the auditor's office of Hamilton county, marked exhibit D, that is to say:

D.

AUDITOR'S OFFICE, HAMILTON CO., OHIO,

February 27th, 1847.

I hereby certify, that for the year A. D. 1837, the following real property was, by the auditor of said county, regularly entered on the

tax list of said county in the following words, to wit, Cooper, James, 5 acres in sec. 24, T. 4, F. R. 1, val. $830, tax $15 35 cts. 5 m.; and that said land was, by the treasurer of Hamilton county, returned "no goods;" and that to said return the following certificates are appended, to wit,

I, George P. Torrence, treasurer of Hamilton county, and by virtue of my office collector of the taxes for said county, do solemnly swear, that the foregoing delinquencies are to the best of my knowledge and belief truly stated, and that the reasons for returning such delinquent taxes as noted thereon, truly exist.

GEO. P. TORRENCE, *Treasurer.*

Sworn to and subscribed before me, who administered the oath as above.

H. McDOUGAL, *Auditor.*

I certify, that I administered the oath to Geo. P. Torrence, treasurer of Hamilton county, in all cases of the foregoing delinquencies of the several townships for the year 1837.

H. McDOUGAL, *Auditor H. C. O.*

Whereupon the said county auditor made out, and transmitted to the auditor of State, said land so returned delinquent as aforesaid; and afterwards said county auditor added the interest and penalty which had accrued thereon, to the taxes for the year A. D. 1837, together with the taxes for the year 1838, and entered the same on the tax list of said county for the year last aforesaid, as follows, to wit:

Cooper, James, 5 acres, sec. 24, T. 4, F. R. 1, 1837, val. $830, tax $20 11 cts. 5m.; Cooper, James, 5 acres, sec. 24, T. 4, F. R. 1, 1838, val. $830, tax $17 43; and caused the same to be advertised in the Cincinnati Republican and Commercial Register, a newspaper printed, and in general circulation, in said county, for four weeks, between the first day of October, A. D. 1838, and the first day of December, A. D. 1838, in the following words, to wit, Cooper, James, 5 acres, sec. 24, T. 4, R. 1, value $830, amount due $37 54 cts. 5 m., with a notice that the land, or so much thereof as would be necessary to satisfy the taxes, penalty, and interest charged thereon, would be sold at the court-house door in Cincinnati, on the last Monday of December, A. D. 1838, (being the 31st,) by the treasurer of said county, commencing at 10 o'clock, a. m., of said day, provided the amount due shall not be discharged previous to that period.

And afterwards, to wit, on the said last Monday of December, being the 31st day of said month, in the year last aforesaid, the treasurer of said county, in pursuance of said notice, did attend at the court-house of the county aforesaid, and after the hour of ten o'clock, a. m., of said day, in the presence of the auditor of said county, did offer for sale said land, or so much thereof as was necessary to pay the taxes, interest, and penalties charged thereon, and remaining due and unpaid at that time; and in the record of said sale the aforesaid land is returned

as follows, to wit, "Cooper, James, 5 acres, sec. 24, T. 4, F. R. 1, value $830, tax $41 29 cts., not sold, forfeited to State of Ohio." Said land, so delinquent and so forfeited, was afterwards transmitted by said county auditor, to the auditor of State, and was by the auditor of State returned to the county auditor of Hamilton county, directing the same to be sold in pursuance to the statute in such cases made and provided, in the words following, to wit:

AUDITOR OF STATE'S OFFICE, COLUMBUS, O.,
June 5, 1843.

Auditor of Hamilton county: You will carefully examine the foregoing list, and strike from it such lands or lots as you may know to be erroneously forfeited, taking care that none such escape the duplicate of taxation. You will then proceed to advertise and sell the remainder, according to the original act for the sale of forfeited lands, and the amendatory act passed Feb. 15th, 1842. Send me a newspaper containing your advertisement.

Very respectfully,
JNO. BROUGH, *Aud. of State*,
By J. B. THOMAS.

Said lot was afterwards, by said county auditor, advertised as follows, to wit, "Cooper, James, 5 acres, sec. 24, T. 4, Fr. R. 1, Cin'i, value $830, am't due $99 $\frac{88}{100}$," in the Cincinnati Gazette, and in the Cincinnati Enquirer, two newspapers in general circulation in said county, for four weeks immediately preceding the first day of December, A. D. 1843, with a notice that if the tax, interest, and penalties charged on said land be not paid into the county treasury, and the treasurer's receipt produced therefor, before the time specified in said notice for the sale of said land, then, and in that case, said land would, on the second Monday [of] December, being the 11th day of said month, be exposed to sale at the court-house in said county, to satisfy said tax, interest, and penalties due thereon; said county auditor publicly opened said sale on the said 11th day of December, at the hour of ten o'clock in the forenoon of said day, and said land, as appears by the record of said sale, was sold to Chas. Phelps for the sum of (80 $\frac{00}{000}$.) eighty dollars, under date of 11 December, 1843.

JOHN C. THORP, [SEAL.]
Aud. Ham. county, O.

To the admission of so much of said abstract as purports to be a copy of a letter from John Brough, auditor of State, to Hugh McDougal, auditor of Hamilton county, the plff. objected as irrelevant, illegal, and incompetent; but the court overruled the objection and admitted the evidence; whereupon the plaintiff, by his counsel excepted, and prayed the court to sign and seal this his bill of exceptions, which is done accordingly. The defendant's counsel then prayed the court to instruct the jury that the description of the lot upon the duplicate, as appears by the abstract aforesaid, was not a pertinent description of the lot, such as